With regard to the remaining grounds submitted by counsel, I have considered them summarily and find no merit in the arguments.

Applications allowed.

Solicitors: *Shan & Gooi; Abdul Rahman Saad & Associates; Kam Woon Wah & Co.*

Reported by *Zarinah Marican*

Ng Kam Loon & Ors v Director of Public Works Department, Johore & Anor

HIGH COURT (JOHORE BAHRU) — ORIGINATING SUMMONS NO 31-371 OF 1986
RICHARD TALALLA JC
3 MARCH 1990

Land Law — Acquisition of land — Offer of compensation by Collector — Offer accepted by plaintiffs — 75% of compensation paid to plaintiffs — Director of Public Works filed objection — Collector referred matter to court for determination — Plaintiffs sought declaration that Director not entitled to object — Whether Director can object after offer accepted without protest — Whether Director an 'interested person' — Whether Collector agent of Director — Land Acquisition Act 1960, ss 12, 37(1) & (3)

The plaintiffs were the owners of the land lot 117 held under EMR 77, mukim of Tebrau, Johore Bahru. The state authority intended to acquire a part of the plaintiffs' said land. The appropriate steps were taken as required by the provisions of the Land Acquisition Act 1960 ('the Act'). Notices of award and offer of compensation were served on the plaintiffs. On 11 July 1982, the plaintiffs through their solicitors accepted the offer. In the event, the Collector (the second defendant) paid to the plaintiffs compensation of $306,750 representing 75% of the award, withholding 25% thereof. The first defendant (Director of Public Works Department, Johore) then filed an objection to the award and the Collector referred the matter to the court for determination. In this originating summons, the plaintiffs are seeking, inter alia, a declaration that the Director is not entitled to object to the award and the Collector must pay the full compensation he has offered.

The plaintiffs argued that there was no question of the Director being entitled to object or having the matter referred to court and that under s 44(2) of the Act, the court is required to consider the interest of all persons interested who have not accepted the award and that excluded them because they have accepted the award. It was further argued that the Collector is the agent of the Director.

Held, dismissing the plaintiffs' application:

(1) The court found that the total amount in respect of the land in question exceeded $15,000 and that the Director is a person undertaking a work which in the opinion of the state authority, to wit the Ruler of the State of Johore, is a public utility. Further, the person on whose behalf the land is acquired pursuant to the provisions of s 3 is the Director. That being the case, the Director is deemed to be a person interested in the land in question under the provisions of sub-s 1 of s 37 and therefore may make objections on any of the grounds specified in the subsection.

(2) It is implicit that the inquiry by the Collector into the value of the land and the assessment of the amount of compensation which in his opinion is appropriate, pursuant to the provisions of s 12, is a function the nature of which is judicial. The Collector is required to inquire into the respective interests of all persons claiming compensation or who in his opinion are entitled to compensation in respect of the land in question, and into the objections, if any, by any interested person to the area of the land in question. Therefore it cannot be said that the relationship between the first and second defendants is one of principal and agent.

(3) Section 29A of the Act provides, inter alia, for 25% of the amount of any award exceeding $15,000 to be withheld until the amount of compensation is finally determined by the court under s 47 or the Federal Court (now the Supreme Court) or the Yang Di Pertuan Agong under s 49 and that if such final determination results in a reduction of the amount of compensation, the amount withheld or so much thereof as equals the amount of reduction, as the case may be, shall become free of all claims in respect of the compensation, and the remainder, if any, shall, as soon as may be, be paid to the person entitled thereto.

(4) The duty of the court is to consider the interest of the persons affected by the objection, including persons who have consented without protest to receive payment of compensation should there be any likelihood of the court reducing the amount of compensation. It is true that it is expressly provided in s 44(2) that the court shall consider the interest of all persons interested who have not accepted the award, whether those persons have themselves made any objection or not. That does not mean to say that the court is precluded from considering the interests of those who have consented without protest.

(5) The plaintiffs, having accepted without protest and consented to the Collector's offer, cannot now have their claim referred to the court. However, should there be a proper objection to the award, they are not precluded from defending the award and consequently the offer.

[*Editorial note*: The plaintiffs have appealed to the Supreme Court vide SCCA No 01-34 of 1990.]

Cases referred to

1 *Crown Brewery Mussoorie* v *Collector of Dehra Dun* ILR (1897)19 Allahabad 339 (refd)
2 *Setiausaha Tetap Kementerian Pelajaran* v *CLR, Butterworth* [1972] 2 MLJ 155 (refd)

Legislation referred to

Land Acquisition Act 1960 ss 12(2), 37(1), (3), 44 (1), (2), 45(2), 47, 49

Wong Kim Fatt (*Abdul Razak Ahmad* with him) for the plaintiffs.

Abdul Rahim bin Uda (Assistant State Legal Adviser) for the defendants.

Cur Adv Vult

Richard Talalla JC: The plaintiffs were the owners of the land held under EMR 77 lot 117, mukim of Tebrau, Johore Bahru. Pursuant to the provisions of s 3(b) of the

Land Acquisition Act 1960 ('the Act'), the state authority may acquire any land which is needed by any person or corporation undertaking a work which in the opinion of the state authority is of public utility. In this instance, the state authority means the Ruler of the State of Johore, see s 2(1) of the Act. Hereafter reference to sections means sections of the Act. The state authority wished to acquire a part of the plaintiffs' said land, some 19,802 sq ft thereof. The appropriate steps were taken as required by the provisions of the Act. In particular, notice of intended acquisition was gazetted pursuant to ss 10 and 52. Notice of inquiry was issued also under s 10. The second defendant, 'the Collector', conducted an inquiry as required by s 12 whereafter an award ('the award') was made under s 14. Notice of award and offer of compensation was served on the plaintiffs pursuant to the provisions of s 16. On 11 July 1982, the plaintiffs through their solicitors accepted the offer. In the event, the Collector, following ss 29 and 29A, paid to the plaintiffs compensation of $306,750 representing 75% of the award, withholding 25% thereof.

The first defendant, the Director of Public Works Department Johore ('the Director'), acting under s 37(3) filed an objection. As required by s 38(1), the objection was by written application to the Collector and under s 38(5), the Collector referred the matter to this court for determination. See Land Reference No 12 of 1984.

In this originating summons, the plaintiffs are seeking, inter alia, a declaration that the Director is not entitled to object to the award and the Collector must pay in full the compensation he has offered.

Section 37(1) and (3) of the Act is as follows:

> (1) Any person interested in any scheduled land who, pursuant to any notice under sections 10 or 11, has made a claim to the Collector in due time and who has not accepted the Collector's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to the provisions of this section, make objection to:
>
> (a) the measurement of the land;
> (b) the amount of the compensation;
> (c) the persons to whom it is payable;
> (d) the apportionment of the compensation.
>
> (3) Where the total amount of any award in respect of any scheduled land exceeds fifteen thousand ringgit any Government or any person or corporation undertaking a work which in the opinion of the State Authority is of public utility, and on whose behalf such land was acquired pursuant to the provisions of s 3, shall be deemed to be a person interested in any scheduled land under the provisions of subsection (1), and may make objections on any of the grounds specified in subsection (1).

The plaintiffs' case is that there has been an offer by the Collector which the plaintiffs have accepted, that therefore the Collector must pay the compensation accepted and the matter should end there. Under the circumstances, so it is argued on behalf of the plaintiffs, there is no question of the Director being entitled to object or having the matter referred to court, that indeed the plaintiffs themselves are precluded from doing so (see s 30(b)), they having received payment otherwise than under protest. The plaintiffs say that this is quite clear because under s 43(c) whilst all persons interested in the objection are entitled to notice of hearing of the objection by the court, they are not; they being persons who have consented without protest to receive payment of the compensation awarded. What is more, the plaintiffs say, under s 44(2) the court is required to consider the interests of all persons interested who have not accepted the award and that excludes them because they have accepted the award.

The plaintiffs concede that the Director is a person undertaking a work which in the opinion of the state authority is of public utility. They also concede that the land was acquired by the Collector on the Director's behalf. See ss 3 and 37(3).

The plaintiffs say that the Collector placed the offer before them, they accepted the offer without protest and in doing so they forfeited their right to have their claim referred to court. That being so, they say it is not right for the Director now to go to court and try to reduce the compensation.

The Collector admits to a duty to defend his award and offer but not to the plaintiffs' contention that the Director is not entitled to object to the award. This, say the plaintiffs, suggests that the Collector is blowing hot and cold.

The plaintiffs argue that it is implicit that they are not looked upon as persons interested in the objection and this must give rise to only one inference and that is the intention of Parliament that the matter, at the stage of acceptance of compensation, is to be treated as settled completely. It is further argued on behalf of the plaintiffs that the Collector is the agent of the Director and reliance is placed in this regard on the case of *Crown Brewery Mussoorie* v *Collector of Dehra Dun.*[1]

On behalf of the defendants it is submitted that the provisions of s 37(3) are explicit and vest in the Director a right to make objections on any of the grounds specified in s 37(1) and that there is no question of the Collector blowing hot and cold. It is further submitted on behalf of the defendants that the relationship between the Director and the Collector is not that of principal and agent, that by reference to s 12 the Collector should be deemed to be an adjudicating officer and the inquiry thereunder a court proceeding. Therefore, it is argued, the Collector is an independent entity making a decision affecting the rights of both the acquiring body and the land owners and from

whose decision both parties would ordinarily have a right of appeal and that, accordingly, it follows that there could be no question of the Collector being an agent of the acquiring body.

It is further argued that the provisions of s 30(b) do not take away the right of appeal of the land owners, that it only provides for the exclusion of the right of the land owners to refer their claim to the court if they accept the award without protest. The case of *Setiausaha Tetap Kementerian Pelajaran* v *CLR, Butterworth*[2] was cited by the assistant state legal adviser as being the authority for the proposition that the acquiring body can be an objector.

It is lastly argued on behalf of the defendants that it is implicit by reference to s 29A of the Act that objection by the government or person or corporation on whose behalf land is acquired to an award is permissible because that section provides for the withholding of 25% of any award exceeding $15,000 until the amount of compensation is finally determined either by the court under s 47 or if there is an appeal or further appeal, under circumstances set out in that section.

The plaintiffs in reply argue that the case of *Setiausaha Tetap Kementerian Pelajaran*[2] is distinguishable because in that case the court issued notice of hearing of the land reference to the land owner following objection by the Kementerian Pelajaran citing the Collector as a respondent and the land owner appeared at the court hearing. He was represented by counsel who did not object to the land owner being a party. The award was reduced by the court. The land owner accepted the decision of the court without any apparent appeal. But in the present case, so it is argued on behalf of the plaintiffs, they as land owners are objecting to the locus standi of the Director.

The view I take is that s 37(3) of the Act is clear in its terms. There is no ambiguity. The subsection must be interpreted literally. Applying that subsection to the facts in this case, I find that the total amount in respect of the land in question exceeds $15,000. I find that the Director is a person undertaking a work which in the opinion of the state authority, to wit the Ruler of the State of Johore, is of public utility. I further find that the person on whose behalf the land is acquired pursuant to the provisions of s 3 is the Director. All this is as conceded by the plaintiffs. That being the case and in terms of the subsection, the Director is deemed to be a person interested in the land in question under the provisions of sub-s 1 of s 37 and therefore may make objections on any of the grounds specified in the subsection last referred.

It is implicit that the inquiry by the Collector into the value of the land and the assessment of the amount of compensation which in his opinion is appropriate, pursuant to the provisions of s 12, is a function the nature whereof is judicial; a fortiori as by virtue of sub-s 2 of that section, the Collector is required to enquire into the respective interests of all persons claiming compensation or who in his opinion are entitled to compensation in respect of the land in question, and into the objections, if any, by any interested person to the area of the land in question. It seems to me therefore that it cannot be said that the relationship between the defendants is one of principal and agent.

I do not see that the plaintiffs are disadvantaged procedurally in having accepted the Collector's offer without protest or in consenting. Quite rightly the notice of award and offer of compensation is in Form H. That form gives notice that s 29(A) requires the collector to withhold 25% of the amount of award in certain circumstances, subject to provisions of that section. Thus the plaintiffs should have been aware of the provisions of s 29(A). That section provides, inter alia, for 25% of the amount of any award exceeding $15,000 to be with held until the amount of compensation is finally determined by the court under s 47 or the Federal Court (now the Supreme Court) or the Yang Di Pertuan Agong under s 49 and that if such final determination results in a reduction of the amount of compensation, the amount withheld or so much thereof as equals the amount of reduction, as the case may be, shall become free of all claims in respect of the compensation, and the remainder, if any, shall, as soon as may be, be paid to the person entitled thereto.

It is true that the plaintiffs having received payment of 75% of the amount awarded otherwise than under protest are not entitled to require their claim to be referred to the court under s 37. I see nothing wrong with that. It simply means that they having accepted the Collector's offer of compensation cannot now retract by going to the court and claiming more. It does not mean that they cannot in the light of the objection by the Director go to court and object to the objection of the Director. Indeed the Collector's reference to court must be in Form O. That form which is addressed to the court requires the Director to state the names and addresses of all the persons whom he has reason to believe are interested in the land and to set out their respective interests. As well, he is required to state the notices which have been served upon the parties interested. Thus the court should have knowledge of all interested parties.

It is correct that the Collector's obligation to give notice of and direct appearance at the hearing of the court to all persons interested in the objection excludes those who have consented without protest to receive payment of the compensation awarded. The fact remains that the court should be informed by the Collector of all interested persons.

The duty of the court is to consider the interests of the persons affected by the objection. See s 44(1). That, to my mind, includes persons who have consented without protest to receive payment of compensation should there be any likelihood of the court reducing the amount of compensation. It is true that it is expressly provided in s 44(2) that the court shall consider the interest of all persons interested who have not accepted the award, whether those persons have themselves made an objection or not. That does not mean to say that the court is precluded from considering the interests of those who have consented without protest.

It is provided in s 45(2) that unless inconsistent with anything contained in the Act, the provisions of the law for the time being in force relating to civil procedure shall apply to all proceedings before the court under the act. That brings in the Rules of the High Court 1980 under which there is ample provision for the court on application or on its own motion to bring into the proceedings all interested parties. See O 15 r 6 of those Rules. That is in fact what happened in the case of *Setiausaha Tetap Kementerian Pelajaran*[2] above-stated.

In the end, to my mind, it boils down to this. The plaintiffs having accepted without protest and consented to the Collector's offer, cannot now have their claim referred to the court. However, should there be a proper objection to the award, they are not precluded from defending the award and consequently the offer. The application is therefore dismissed with costs.

Application dismissed.

Solicitors: *Abdul Razak & Co.*

Reported by *Zarinah Marican*

Sequerah Stephen Patrick (Mrs) v Penang Port Commission

HIGH COURT (PENANG) — ORIGINATING SUMMONS NO 24-273-89
WAN ADNAN J
22 FEBRUARY 1990

Tort — Damages — Limitation of liability — Collapse of public jetty — Negligence — Power of High Court to make orders with respect to claims for damages under s 77 of Penang Port Commission Act 1955 — Penang Port Commission Act 1955, ss 73, 74 & 77

Public Authorities — Liability for damages — Negligence — Collapse of public jetty — Limitation of liability — Applicability of s 77 of Penang Port Commission Act 1955 — Penang Port Commission Act 1955, ss 73, 74 & 77

Several suits had been filed against the Penang Port Commission for damages as a result of the collapse of Pangkalan Sultan Abdul Halim Butterworth. Upon an ex parte application by the Commission under s 77 of the Penang Port Commission Act 1955, the High Court granted orders with respect to the proceedings for claims for damages. The applicant applied to set aside these orders on the ground that the court has no power to make them.

Held, allowing the application:
Section 77 of the Act must be read with the preceding sections, ie ss 72, 73, 74, 75 and 76. The words 'any liability is alleged to have been incurred by the Commission' must refer to liability under ss 73 and 74. But the claims now being brought are for damages in connection with the collapse alleged to have been caused by the negligence of the commission. They are not claims under ss 73 and 74 of the Act. Section 77 therefore does not apply in this case. Its application is limited to liability alleged to have been incurred under ss 73 and 74 of the Act.

[*Editorial Note*: The respondent has appealed to the Supreme Court vide Civil Appeal No 02-52-90.]

Legislation referred to
Penang Port Commission Act 1955 ss 72, 73, 74, 75, 76, 77

K Balasundaram for the applicant.
Margaret Kam for the respondent.

Cur Adv Vult

Wan Adnan J: On 31 July 1988, part of the Penang Port Commission's ('the Commission') upper deck of Pangkalan Sultan Abdul Halim Butterworth collapsed ('the collapse'). In consequence, many suits and actions had been filed in the courts against the Commission claiming damages. On 22 April 1989, upon an ex parte application by the Commission under s 77 of the Penang Port Commission Act 1955 ('the Act'), the following orders were made:

1 All proceedings pending or may be pending after the date hereof in any court in relation to the above-mentioned collapse of part of the upper deck of Pangkalan Sultan Abdul Halim Butterworth on 31 July 1988 be stayed until further order.

2 That the question of liability and the amount of the Commission's liability if any in this matter will be inter